

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **DISTRICT OF NEVADA**

3       TRENT HENRICKSON,

4                   Plaintiff

5       v.

6       STATE OF NEVADA, et al.,

7                   Defendants

Case No.: 2:20-cv-01014-APG-EJY

**Order Denying Motion to Stay Pending  
Appeal**

[ECF No. 93]

8           The defendants move for a stay pending appeal of the injunction I entered against them.  
9       The injunction requires the defendants to provide plaintiff Trent Henrickson, who is an inmate at  
10   High Desert State Prison (HDSP), with two hours of outdoor exercise time per week and one  
11   hour of tier time daily, subject to temporary limitations when a genuine emergency exists. ECF  
12   No. 87. I entered the injunction after a hearing held on March 22, 2021. I deny the motion to  
13   stay because the defendants have provided insufficient evidence.

14   **I. ANALYSIS**

15           “A stay is not a matter of right.” *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quotation  
16   omitted). “It is instead an exercise of judicial discretion.” *Id.* (quotation omitted). “Judicial  
17   discretion in exercising a stay is to be guided by” these principles: ““(1) whether the stay  
18   applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the  
19   applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will  
20   substantially injure the other parties interested in the proceeding; and (4) where the public  
21   interest lies.”” *Lair v. Bullock*, 697 F.3d 1200, 1203 (9th Cir. 2012) (quoting *Nken*, 556 U.S. at  
22   434). “The party requesting a stay bears the burden of showing that the circumstances justify an  
23   exercise of that discretion.” *Nken*, 556 U.S. at 433-34 (citation omitted).

1       The defendants have not carried their burden of showing that a stay is justified. They  
2 first argue that I “did not have the opportunity to review relevant evidence regarding HDSP’s  
3 operations” because I did not hold an evidentiary hearing. ECF No. 93 at 2. However, any  
4 failure to consider certain evidence is due to the defendants’ failure to present that evidence in  
5 response to Henrickson’s motion. The defendants had ample opportunity to present evidence in  
6 response to the motion, but provided only one declaration (ECF No. 69-1), which I relied upon in  
7 entering my order. Indeed, my order only slightly modifies current HDSP procedures as set forth  
8 in that declaration. *See* ECF No. 87 at 4 (“The current policy for units 9-12 provides one hour of  
9 yard time per week and one hour of tier time per day, so adding one hour of yard time to that  
10 policy does not additionally burden the defendants as compared to the harm Henrickson suffers.  
11 ECF No. 69-1 at 3.”).

12       The defendants did not provide a reasonable justification for the deprivation of  
13 Henrickson’s exercise time in response to his motion for injunctive relief. They now argue and  
14 offer evidence that the injunction creates risks of violence at HDSP. But that was discussed in  
15 their opposition and supporting declaration, and it is still not an adequate basis to stay the  
16 injunction. The defendants state that “HDSP has experienced a significant increase in violent  
17 encounters between offenders during scheduled recreation,” and that there is a “very real  
18 possibility that other inmates will retaliate violently against” Henrickson and the guards who will  
19 transport him for outdoor exercise. ECF No. 93 at 1-2, 16. Henrickson responds that he “ha[s]  
20 received only support and encouragement” from other inmates regarding the injunction, and he  
21 “feel[s] absolutely zero threat and/or harm.” ECF No. 94 at 23.

22       The defendants contend that the injunction creates safety concerns because in  
23 implementing any schedule, HDSP must consider its multiple offender classifications, layout,

1 available recreation hours and areas, staffing available during recreation, social distancing during  
2 the pandemic, and “[e]quality in recreation between various populations.” ECF No. 93 at 11.  
3 This information pertains to HDSP’s general operations, but is not a reasonable justification for  
4 the deprivation of Henrickson’s constitutional rights. While the defendants’ evidence does not  
5 suffice for a stay, the defendants may instead file a properly supported motion to modify or  
6 vacate the injunction. At present, however, I see no reason to do either.

7       The defendants also assert that the injunction causes problems related to Covid-19, but  
8 provide only vague statements such as “the Court’s Injunctive Order . . . requires HDSP to place  
9 inmates in restricted units and quads, which HDSP has intentionally not done[,]” and “it appears  
10 that the Court’s Order does not give prison officials th[e] option[ ]” to “quarantine an infected  
11 inmate[.]” *Id.* at 17. The order plainly required no such thing. Without more explanation or  
12 evidence, these assertions amount to “[l]ogistical problems” that “cannot justify serious civil  
13 rights violations such as the deprivation of a basic human need.” *Shorter v. Baca*, 895 F.3d 1176,  
14 1186 (9th Cir. 2018) (quotation omitted).

15       Next, the defendants contend that they are entitled to a stay because I “d[id] not even  
16 address” the Prison Litigation Reform Act (PLRA) and did not define a “genuine emergency.”  
17 ECF No. 93 at 9. To the contrary, I am aware that injunctive relief in this context “must be  
18 narrowly drawn, extend no further than necessary to correct the harm the court finds requires  
19 preliminary relief, and be the least intrusive means necessary to correct that harm.” 18 U.S.C. §  
20 3626(a)(2). *See also* ECF No. 87 at 2. I also understand that I must give “substantial weight to  
21 any adverse impact on public safety or the operation of a criminal justice system caused by the  
22 preliminary relief and shall respect the principles of comity set out” in § 3626(a)(1)(B). *Id.* I  
23 respect these requirements and crafted the injunction with them in mind. I note that the

1 injunction is temporary because I ordered “the parties to file a report in 60 days on the status of  
2 Henrickson’s out-of-cell time.” ECF No. 87 at 5. And I purposely did not define “genuine  
3 emergency,” in order to allow the defendants discretion, to be exercised in good faith and in  
4 accordance with Ninth Circuit law.<sup>1</sup>

5       The defendants further argue that because of staffing limitations at HDSP, only one  
6 officer is “available to supervise twenty-eight or more offenders during recreation,” which  
7 presents a safety problem that “[t]he Court’s Order fails to account for[.]” ECF No. 93 at 16.  
8 This argument does not justify the deprivation of Henrickson’s constitutional rights. Although  
9 “‘logistical problems,’ such as inadequate staffing and limited recreational facilities, may make it  
10 difficult for jail officials to provide adequate exercise to detainees,” the Ninth Circuit has “never  
11 condoned the wholesale, routine deprivation of meals and showers, or meaningful recreation  
12 activities[.]” *Shorter*, 895 F.3d at 1186 (citation omitted). And it also does not suffice to claim  
13 that it is difficult to schedule exercise time “because, for security reasons, inmates had to be  
14 accompanied to the recreation yard by a guard and only one inmate could use the recreation yard  
15 at a time.” *Allen v. Sakai*, 48 F.3d 1082, 1084 (9th Cir. 1994). I must follow the dictates of the  
16 Ninth Circuit, which has rejected similar allegations as bases for the denial of inmates’ basic  
17 human needs.

18       The defendants have not shown a likelihood of success on the merits of an appeal. They  
19 argue that Henrickson may exercise in his cell during tier time, but “the Constitution requires jail  
20 officials to provide outdoor recreation opportunities, or otherwise meaningful recreation, to  
21 prison inmates.” *Shorter*, 895 F.3d at 1185. The defendants contend that because the February  
22

---

23 <sup>1</sup> It is likely that if I had specified what constitutes a “genuine emergency,” the defendants would  
have argued that I gave them no discretion.

1 and March lockdowns “are sperate [sic] from the COVID-19 restrictions,” there should be no  
2 injunction. ECF No. 93 at 9. That argument ignores Henrickson’s point that as of the March 22  
3 hearing, he had received one hour of outdoor exercise since August 28, 2020. The defendants  
4 have not rebutted that point or shown a reasonable justification for the months of deprivation that  
5 Henrickson asserts. Rather, they have referenced “[d]ocumented threats and assaults [that]  
6 happen frequently in prisons.” *Thomas v. Ponder*, 611 F.3d 1144, 1154 (9th Cir. 2010). “Given  
7 that an emergency is different from normal prison conduct, an emergency cannot be deemed to  
8 exist simply because there are documented threats and assaults from time to time—otherwise  
9 every prison would be in a constant state of emergency.” *Id.*

10 The remaining principles I must consider in assessing a stay request do not favor the  
11 defendants. The defendants have not demonstrated that they will be irreparably injured without a  
12 stay. But staying the ordered relief would substantially injure Henrickson because he has a  
13 constitutional right to receive adequate exercise time. And “it is always in the public interest to  
14 prevent the violation of a party’s constitutional rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002  
15 (9th Cir. 2012) (quotation omitted).

## 16 **II. CONCLUSION**

17 I THEREFORE ORDER that the defendants’ motion to stay pending appeal (**ECF No.**  
18 **93**) is **DENIED**.

19 DATED this 12th day of April, 2021.



---

ANDREW P. GORDON  
UNITED STATES DISTRICT JUDGE